UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,107	05/24/2001	Filips Van Liere	NL 000278	1459

24737	7590	06/23/2006

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EXAMINER
WANG, JIN CHENG

ART UNIT	PAPER NUMBER
2628	

DATE MAILED: 06/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

Advisory Action *Before the Filing of an Appeal Brief*	Application No.	Applicant(s)
	09/864,107	VAN LIERE, FILIPS
	Examiner	Art Unit	
	Jin-Cheng Wang	2628	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>12 May 2006</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

    a) ☒ The period for reply expires <u>3</u> months from the mailing date of the final rejection.

    b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

    Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

    (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

    (b)☐ They raise the issue of new matter (see NOTE below);

    (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

    (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

    NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

    The status of the claim(s) is (or will be) as follows:

    Claim(s) allowed: _____.

    Claim(s) objected to: _____.

    Claim(s) rejected: <u>1-3,5-12,14-19,25-33</u>.

    Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See below.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.

13. ☐ Other: _____.
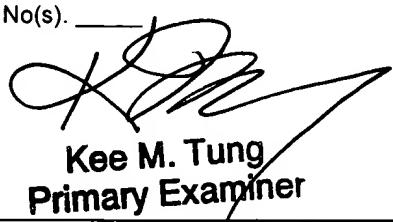
Kee M. Tung/
Primary Examiner

Echerer further discloses enabling the generation of the measurement graphics without activation of ACTION BARS or image fields, OR CONTROL PANELS since Echerer teaches using a mouse only without activating ACTION BARS or image fields, OR CONTROL PANELS. See e.g., column 12, lines 20-30; column 13, lines 25-50; column 15, lines 15-35. Echerer teaches measuring the length of the two points, measuring an area encircled by at least three points and measuring the angle between two lines formed by four points wherein the four points are specified as in column 21 for measuring the angle. Echerer discloses enabling the generation of the measurement graphics without requiring a user to define a type of graphic being generated through the automatic analysis file wherein the measurement graphics is automatically generated (See column 17-18).

Fenster discloses that the user can use the graphical input device such as a single button mouse to measure distances and areas of the three-dimensional image within the most recently moved image plane and the user simply needs to use the graphical input device 38 to indicate the two end points over which the distance is to be measured if the user wishes to measure a distance and the user must identify at least three points if an area is to be measured and the placement of points on the image is done by moving a cursor and the display module 92 connects adjacent points by straight line segments and computes both the overall line length and the area bounded by the lines joining the points using an appropriate scale. In this setting, only a mouse has been placed on the points of the image to measure a distance or an area without activation of menus, toolbars and control panels outside the medical image.

When the pointer symbol is situated on the medical image, a measurement graphics is generated without actuation of one button of the mouse on menus, toolbars and control panels because the pointer symbol is situated on the medical image while the measurement graphics is generated. The pointer symbol is not situated on menus, toolbars and control panels when the pointer symbol is situated on the medical image. Therefore, the actuation of the at least one button of the mouse enables the generation of the plurality of different measurement graphics including measuring the distance of two points on the medical image and the area encircled by three points on the medical image without actuating at least a button of the mouse when the pointer symbol of the mouse is situated on menus, toolbars and control panels, i.e., when the pointer symbol is subsequently moved away from the medical image after the generation of the measurement graphics. Fenster discloses enabling the generation of the plurality of different measurement graphics including the measurement of distance between two points on the medical image and the measurement of area encircled by more than two points on the medical image based only upon actuation of at least one button of said mouse when said pointer symbol is situated on said medical image without clicking on the mouse, even when the pointer symbol is moved outside the medical image and placed on the menus, toolbars, and control panels outside the medical image after the measurement graphics is generated. Fenster discloses enabling the generation of the plurality of different measurement graphics including the measurement of distance between two points on the medical image and the measurement of area encircled by more than two points on the medical image based only upon actuation of at least one button of said mouse when said pointer symbol is situated on said medical image without the actuation of the at least one button of the mouse when said pointer symbol is subsequently moved away from the medical image and placed on menus, toolbars, and control panels. Because the pointer symbol is placed on the medical image in the generation of the measurement graphics, the measurement graphics are generated without the movement of the pointer symbol outside of the medical image while the measurement graphics is generated. In conclusion, Fenster discloses the claim limitation of enabling the generation of the plurality of different measurement graphics based only upon actuation of said at least one button of said mouse when said pointer symbol is situated on said medical image without actuation of said at least one button of said mouse when said pointer symbol is situated on menus, toolbars, and control panels such that the measurement graphics are generated without movement of said pointer symbol outside of said medical image.

According to MPEP 2106, Office personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim are not read into the claim. E-Pass Techs., Inc. v. 3Com Corp., 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003) (claims must be interpreted 'in view of the specification' without importing limitations from the specification into the claims unnecessarily).In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969). See also In re Zletz, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

However Echerer is silent to "displaying...said medical image...without the presence of menus, toolbars and control panels on said graphical interface", "enabling the generation of the at least three measurement graphics without requiring a user to define in advance the type of measurement graphic being generated".

Fenster teaches the claim limitation of "displaying...said medical image...without the presence of menus, toolbars and control panels on said graphical interface" (Fenster discloses in column 23, lines 25-40 and Fig. 27 using the graphical input device to measure distances and areas of the three-dimensional image within the most recently moved plane without the presence of menus, toolbars and control panels on said graphical interface. Fenster teaches that the user uses the graphical input device to indicate the two end points over which the distance is to be measured and the user must identify at least three points if an area is to be measured. Fenster also teaches generating the measurement graphics without moving the pointer outside the medical image).

It would have been obvious to one of ordinary skill in the art to have incorporated the Fenster's measurement method into Echerer's method of processing cursored user interaction because Echerer implicitly suggests providing a menu-less graphical interface for display said medical image (e.g., Echerer column 12, lines 20-30; column 13, lines 25-50) and providing a predefined interaction with said medical image, wherein said interaction is selected from a group of predefined interactions based on said status of each of said at least one button during the interval between multiple said position detection steps (e.g., Echerer column 16, lines 15-67; column 17, lines 1-67; column 18, lines 1-64) therefore suggesting an obvious modification of the Echerer's method for processing a radiograph.

One having the ordinary skill in the art would have been motivated to do this because it would have provided an alternative drawing option that does not rely on the menus, control panels and toolbars for GUI control (Fenster column 23 and Fig. 27).

Although Echerer and Fenster are silent to "enabling the generation of the at least three measurement graphics without requiring a user to define in advance the type of measurement graphic being generated", Fenster discloses enabling the generation of at least two different measurement graphics based only upon the actuation of the at least one button of the mouse, Killcommons discloses enabling the generation of at least three different measurement graphics based only upon the actuation of the at least one button of the mouse. Killmore discloses providing the angle of deviation between two selected vectors on the image in which the operator may select a first vector and move the cursor from the original vector to a second vector. Therefore, having the combined teaching of Echerer, Fenster and Killcommons, one of the ordinary skill in the art realize how to generate at least three different measurement graphics based only upon the actuation of the at least one button of the mouse. Moreover, Echerer discloses enabling the generation of at least three different measurement graphics without requiring a user to define a type of graphic being generated through the automatic analysis file wherein the

measurement graphics is automatically generated (See column 17-18). Echerer's generation of the at least three different measurement graphics is enabled without moving the cursor outside the medical image, i.e., through the automatic analysis file. Therefore, Echerer suggests the claim limitation of "enabling the generation of at least three different measurement graphics based only upon actuation of said at least one button of said mouse when said pointer symbol is situated on said medical image such that the measurement graphics are generated without movement of said pointer symbol outside of said medical image." Echerer's generation of the at least three different measurement graphics is performed through the automatic analysis file without requiring a user clicking on the menus, toolbars and control menus to define in advance the type of measurement graphic being generated. Accordingly to applicant's specification, it is understood that only one measurement graphics is produced at a time and the type of measurement graphics should be defined through the mouse operator interface. However, applicant's claim 1 set forth the claim limitation of "enabling the generation of the at least three measurement graphics without requiring a user to define in advance the type of measurement graphic being generated."

One having the ordinary skill in the art would have been motivated to do this because it would have provided an alternative drawing option that does not rely on the menus, control panels and toolbars for GUI control (Fenster column 23 and Fig. 27; Killcommons column 14, lines 17-57).